and appropriateness criteria applicable to behavioral health, and the contracting with and use of a network of providers; and

''(3) applying the provisions of this section in a manner that takes into consideration similar treatment settings or similar treatments.

''(c) IN- AND OUT-OF-NETWORK.—In the case of a group health plan (or health insurance coverage offered in connection with such a plan) that provides both medical and surgical benefits and mental health benefits, and that provides such benefits on both an in- and out-of-network basis pursuant to the terms of the plan (or coverage), such plan (or coverage) shall ensure that the requirements of this section are applied to both in- and out-of-network services by comparing in-network medical and surgical benefits to in-network mental health benefits and out-of-network medical and surgical benefits to out-of-network mental health benefits.

''(d) SMALL EMPLOYER EXEMPTION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), this section shall not apply to any group health plan (or group health insurance coverage offered in connection with a group health plan) for any plan year of any employer who employed an average of at least 2 (or 1 in the case of an employer residing in a State that permits small groups to include a single individual) but not more than 50 employees on business days during the preceding calendar year.

''(2) NO PREEMPTION OF CERTAIN STATE LAWS.—Nothing in paragraph (1) shall be construed to preempt any State insurance law relating to employers in the State who employed an average of at least 2 (or 1 in the case of an employer residing in a State that permits small groups to include a single individual) but not more than 50 employees on business days during the preceding calendar year.

''(3) APPLICATION OF CERTAIN RULES IN DETERMINATION OF EMPLOYER SIZE.—For purposes of this subsection:

''(A) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—Rules similar to the rules under subsections (b), (c), (m), and (o) of section 414 of the Internal Revenue Code of 1986 shall apply for purposes of treating persons as a single employer.

''(B) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

''(C) PREDECESSORS.—Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

''(e) COST EXEMPTION.—

''(1) IN GENERAL.—With respect to a group health plan (or health insurance coverage offered in connection with such a plan), if the application of this section to such plan (or coverage) results in an increase for the plan year involved of the actual total costs of coverage with respect to medical and surgical benefits and mental health benefits under the plan (as determined and certified under paragraph (3)) by an amount that exceeds the applicable percentage described in paragraph (2) of the actual total plan costs, the provisions of this section shall not apply to such plan (or coverage) during the following plan year, and such exemption shall apply to the plan (or coverage) for 1 plan year. An employer may elect to continue to apply mental health parity pursuant to this section with respect to the group health plan (or coverage) involved regardless of any increase in total costs.

''(2) APPLICABLE PERCENTAGE.—With respect to a plan (or coverage), the applicable percentage described in this paragraph shall be—

''(A) 2 percent in the case of the first plan year in which this section is applied; and

''(B) 1 percent in the case of each subsequent plan year.

''(3) DETERMINATIONS BY ACTUARIES.—Determinations as to increases in actual costs under a plan (or coverage) for purposes of this section shall be made and certified by a qualified and licensed actuary who is a member in good standing of the American Academy of Actuaries. All such determinations shall be in a written report prepared by the actuary. The report, and all underlying documentation relied upon by the actuary, shall be maintained by the group health plan or health insurance issuer for a period of 6 years following the notification made under paragraph (6).

''(4) 6-MONTH DETERMINATIONS.—If a group health plan (or a health insurance issuer offering coverage in connection with a group health plan) seeks an exemption under this subsection, determinations under paragraph (1) shall be made after such plan (or coverage) has complied with this section for the first 6 months of the plan year involved.

''(5) NOTIFICATION.—An election to modify coverage of mental health benefits as permitted under this subsection shall be treated as a material modification in the terms of the plan as described in section 102(a) of the Employee Retirement Income Security Act of 1974 and shall be subject to the applicable notice requirements under section 104(b)(1) of such Act.

''(6) NOTIFICATION TO APPROPRIATE AGENCY.—

''(A) IN GENERAL.—A group health plan (or a health insurance issuer offering coverage in connection with a group health plan) that, based upon a certification described under paragraph (3), qualifies for an exemption under this subsection, and elects to implement the exemption, shall notify the Department of Labor or the Department of Health and Human Services, as appropriate, of such election. A health insurance issuer providing health insurance coverage in connection with a group health plan shall provide a copy of such notice to the State insurance department or other State agency responsible for regulating the terms of such coverage.

''(B) REQUIREMENT.—A notification under subparagraph (A) shall include—

''(i) a description of the number of covered lives under the plan (or coverage) involved at the time of the notification, and as applicable, at the time of any prior election of the cost-exemption under this subsection by such plan (or coverage);

''(ii) for both the plan year upon which a cost exemption is sought and the year prior, a description of the actual total costs of coverage with respect to medical and surgical benefits and mental health benefits under the plan; and

''(iii) for both the plan year upon which a cost exemption is sought and the year prior, the actual total costs of coverage with respect to mental health benefits under the plan.

''(C) CONFIDENTIALITY.—A notification under subparagraph (A) shall be confidential. The Department of Labor and the Department of Health and Human Services shall make available, upon request and on not more than an annual basis, an anonymous itemization of such notifications, that includes—

''(i) a breakdown of States by the size and type of employers submitting such notification; and

''(ii) a summary of the data received under subparagraph (B).

''(7) AUDITS BY APPROPRIATE AGENCIES.—To determine compliance with this subsection, the Department of Labor and the Department of Health and Human Services, as appropriate, may audit the books and records of a group health plan or health insurance issuer relating to an exemption, including any actuarial reports prepared pursuant to paragraph (3), during the 6 year period following the notification of such exemption under paragraph (6). A State agency receiving a notification under paragraph (6) may also conduct such an audit with respect to an exemption covered by such notification.

''(f) MENTAL HEALTH BENEFITS.—In this section, the term 'mental health benefits' means benefits with respect to mental health services (including substance use disorder treatment) as defined under the terms of the group health plan or coverage, and when applicable as may be defined under State law when applicable to health insurance coverage offered in connection with a group health plan.

''(g) ABORTION CLARIFICATION.—Nothing in this section shall require a group health plan (or health insurance coverage offered in connection with such a plan) to cover abortion as a treatment.''.

SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—The provisions of this Act shall apply to group health plans (or health insurance coverage offered in connection with such plans) beginning in the first plan year that begins on or after January 1 of the first calendar year that begins more than 1 year after the date of the enactment of this Act.

(b) TERMINATION OF CERTAIN PROVISIONS.—

(1) ERISA.—Section 712 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185a) is amended by striking subsection (f) and inserting the following:

''(f) Sunset—This section shall not apply to benefits for services furnished after the effective date described in section 3(a) of the Mental Health Parity Act of 2008.''.

(2) PHSA.—Section 2705 of the Public Health Service Act (42 U.S.C. 300gg-5) is amended by striking subsection (f) and inserting the following:

''(f) Sunset—This section shall not apply to benefits for services furnished after the effective date described in section 3(a) of the Mental Health Parity Act of 2008.''.

SEC. 4. FEDERAL ADMINISTRATIVE RESPONSIBILITIES.

(a) GROUP HEALTH PLAN OMBUDSMAN.—

(1) DEPARTMENT OF LABOR.—The Secretary of Labor shall designate an individual within the Department of Labor to serve as the group health plan ombudsman for the Department. Such ombudsman shall serve as an initial point of contact to permit individuals to obtain information and provide assistance concerning coverage of mental health services under group health plans in accordance with this Act.

(2) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—The Secretary of Health and Human Services shall designate an individual within the Department of Health and Human Services to serve as the group health plan ombudsman for the Department. Such ombudsman shall serve as an initial point of contact to permit individuals to obtain information and provide assistance concerning coverage of mental health services under health insurance coverage issued in connection with group health plans in accordance with this Act.

(b) AUDITS.—The Secretary of Labor and the Secretary of Health and Human Services shall each provide for the conduct of random audits of group health plans (and health insurance coverage offered in connection with such plans) to ensure that such plans are in